IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 21943 of 2006(K)

PETITIONER:

RAJISHA VIJAYA NIVAS,
H.S.A. (MATHEMATICS), VELOM HIGH SCHOOL,
CHERAPURAM, KUTTIADI, KOZHIKODE DISTRICT.

BY ADV. SRI.R.K.MURALEEDHARAN

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY**
   SECRETARY, GENERAL EDUCATION DEPARTMENT,
   THIRUVANANTHAPURAM.

2. **THE DISTRICT EDUCATIONAL OFFICER,**
   VADAKARA.

BY GOVERNMENT PLEADER SRI.T.T.MOHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 21943/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPOINTMENT ORDER AND APPROVAL DT.5.6.98.

EXT.P2:- COPY OF THE APPOINTMENT ORDER AND APPROVAL DT.24.6.01.

EXT.P3:- COPY OF THE APPOINTMENT ORDER DT.1.6.05.

EXT.P4:- COPY OF THE ORDER NO.K.DIS B3-5689/05, DT. 31.12.05 OF THE 2ND RESPONDENT.

EXT.P5:- COPY OF THE PETITION FILED BEFORE THE 1ST RESPONDENT DT.9.1.06.

EXT.P6:- COPY OF THE ORDER OF THE 1ST RESPONDENT NO.5629/A2/2006/G.EDN. DT.18.3.06.

EXT.P7:- COPY OF THE G.O.(MS) 11/01/G.EDN. DT.7.1.02.

EXT.P8:- COPY OF THE CIRCULAR DT.26.2.03.

/TRUE COPY/

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K. M. JOSEPH, J.

W.P.C. NO. 21943 OF 2006 K

Dated this the 27th February, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner was appointed in a long leave vacancy of HSA (Mathematics) and the appointment was approved from 8.6.1998 onwards (Ext.P1). The teacher who took leave has extended the leave and consequently the petitioner was appointed and it was approved as evident from Ext.P2. From 1.5.2005, one HSA (Mathematics) was promoted as HM and the petitioner was appointed from 1.6.2005 as HSA (Mathematics). The approval sought was rejected by Ext.P4, stating that as against seven sanctioned posts, eight teachers are working and there is deficiency of one HSA (English). On the basis of Ext.P5 representation, Ext.P6 order was passed, which is stated to be a non-speaking order. Petitioner submits that Ext.P2 appointment was on the strength of Rule 51A claim that the petitioner had acquired on the strength of Ext.P1 appointment being approved.

Therefore, the petitioner submits that even in implementing the order dated 7.1.2002, petitioner is entitled to protection in view of the decision of a Division Bench of this Court in Anitha John v. Eldhose Mathew (2003 (1) KLJ 116). Petitioner also relies on Ext.P7 Circular in support of her contention.

2. A Counter Affidavit is filed on behalf of first respondent which proceeds on the basis that there are seven sanctioned posts of HSAs and excluding the petitioner, there are eight teachers working. It is further stated in the Counter Affidavit that if G.O.(MS) No.11/02 is not come into force now, 9 posts of HSA (Maths) are admissible in the old ratio 1:1:1.

3. I find that Ext.P6 order is rather cryptic. There is also no reference to the decision of the Division Bench in Anitha John v. Eldhose Mathew (2003 (1) KLJ 116). Petitioner also relies on Ext.P8 Circular. Accordingly, Ext.P6 is quashed and the first respondent is directed to consider and take a decision in the matter in accordance with law, after hearing the petitioner and any other affected party also, within a period of six weeks

from the date of receipt of a copy of this Judgment. First respondent will take into consideration the decision of this Court in Anitha John v. Eldhose Mathew (2003 (1) KLJ 116). It is also open to the petitioner to rely on Ext.P8 Circular.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

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